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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

ALFONSO RIBEIRO,

Plaintiff,

v.

EPIC GAMES, INC., and DOES 1
THROUGH 50,

Defendants.

CASE NO. 2:18-cv-10412-CJC (RAOx)

The Honorable Cormac J. Carney

**DECLARATION OF DALE M.
CENDALI, ESQ. IN SUPPORT OF
DEFENDANTS' MOTION TO
DISMISS, SPECIAL MOTION TO
STRIKE (ANTI-SLAPP), AND
REQUEST FOR JUDICIAL
NOTICE**

Complaint Filed: December 17, 2018

Hearing Date: April 22, 2019

Time: 1:30 p.m.

Courtroom: 7C, 350 W. 1st Street

DECLARATION OF DALE M. CENDALI, ESQ. CASE No. 2:18-cv-10412-CJC (RAOx)
ISO DEFENDANTS' MOTION TO DISMISS,
SPECIAL MOTION TO STRIKE (ANTI-SLAPP),
AND REQUEST FOR JUDICIAL NOTICE

1 I, Dale M. Cendali, Esq., declare as follows:

2 1. I am a partner at the law firm of Kirkland & Ellis LLP, counsel of record
3 for Defendant Epic Games, Inc. (“Epic Games”). I am licensed to practice law in the
4 State of New York and my application for admission *pro hac vice* to practice before
5 this Court is currently pending. I submit this declaration in support of Epic Games’
6 motion to dismiss, special motion to strike (anti-SLAPP), and request for judicial
7 notice.

8 2. Plaintiff’s Complaint was filed on December 17, 2018. Dkt. No. 1. The
9 Complaint alleged that Plaintiff was “in the process of registering The Dance with the
10 United States Copyright Office,” and that on December 15, 2018, Plaintiff “submitted
11 applications for copyright registrations and assigned Copyright Office case numbers
12 1-7226013364, I-7226013290, and 1-7225814191.” Compl. ¶ 42. The Complaint,
13 however, did not attach a copy of the copyright applications, nor did the Complaint
14 attach the deposit copies depicting the works that Plaintiff submitted to the Copyright
15 Office as its specimens.

16 3. On December 19, 2018, pursuant to Copyright Office rules and
17 regulations (37 C.F.R. § 202.2(d)(2)(ii)), Epic Games submitted a Litigation
18 Statement Form LS requesting a copy of Plaintiff’s pending copyright applications,
19 deposit copies, and any correspondence with the Copyright Office regarding
20 Plaintiff’s pending applications.

21 4. On January 17, 2019, because Epic Games had not yet received any
22 information from the Copyright Office, my partner, Joshua Simmons, e-mailed
23 counsel for Plaintiff requesting those items directly from Plaintiff.

24 5. On January 18, 2019, the Copyright Office provided Epic Games with a
25 copy of Plaintiff’s copyright application forms, but at that time did not provide a copy
26 of the correspondence regarding Plaintiff’s applications or the deposit copies.

27 6. On January 20, 2019, counsel for Plaintiff responded to my partner’s
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1 January 17, 2019 e-mail by providing the deposit copies for each of Plaintiff's
 2 pending applications. Counsel for Plaintiff did not provide, however, any
 3 correspondence with the Copyright Office related to the pending applications.

4 7. On February 13, 2019, Epic Games received from the Copyright Office
 5 copies of the E-File Correspondence related to each of Plaintiff's pending
 6 applications. Those materials are referenced and attached below.

7
 8 **PLAINTIFF'S COPYRIGHT APPLICATION — VARIATION A**

9 8. As part of his copyright application for "The Dance by Alfonso Ribeiro -
 10 Variation A" (1-7225814191), Plaintiff submitted to the Copyright Office a copyright
 11 application form. A true and correct copy of Plaintiff's copyright application form for
 12 "The Dance by Alfonso Ribeiro - Variation A" (1-7225814191) is attached hereto as
 13 **Exhibit A.**

14 9. In connection with his copyright application for "The Dance by Alfonso
 15 Ribeiro - Variation A" (1-7225814191), Plaintiff submitted to the Copyright Office as
 16 his deposit copy a video of himself performing on *Dancing with the Stars*. A true and
 17 correct copy of the deposit copy is attached hereto as **Exhibit B**. In the video,
 18 Plaintiff performs different movements. Based on Plaintiff's other copyright
 19 applications for his alleged dance, it appears that the only movements at issue occur
 20 54 seconds into the video. For the convenience of the Court, Epic Games has
 21 excerpted the relevant portion of the deposit copy into a standalone video attached
 22 hereto as **Exhibit C**.

23 10. Attached hereto as **Exhibit D** is a true and correct copy of the E-File
 24 Correspondence with the Copyright Office regarding "The Dance by Alfonso Ribeiro
 25 - Variation A" (1-7225814191). As the correspondence shows, in an email to counsel
 26 for Plaintiff dated January 17, 2019, the Copyright Office "question[ed] whether the
 27 application names the correct author or authors of the work," given its appearance on
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1 *Dancing With the Stars* with a professional dance partner, and requested that Plaintiff
 2 “reply with complete and accurate author and claimant information.” Epic Games has
 3 no information regarding whether Plaintiff has submitted such a reply.

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 5 **PLAINTIFF’S COPYRIGHT APPLICATION — VARIATION B**

6 11. As part of his copyright application for “The Dance by Alfonso Ribeiro -
 7 Variation B” (1-7226013290), Plaintiff submitted to the Copyright Office a copyright
 8 application form. A true and correct copy of Plaintiff’s copyright application form for
 9 “The Dance by Alfonso Ribeiro - Variation B” (1-7226013290) is attached hereto as
 10 **Exhibit E**.

11 12. In connection with his copyright application for “The Dance by Alfonso
 12 Ribeiro - Variation B” (1-7226013290), Plaintiff also submitted to the Copyright
 13 Office as his deposit copy a video of himself performing on the *Graham Norton Show*.
 14 A true and correct copy of the deposit copy is attached hereto as **Exhibit F**. Based on
 15 Plaintiff’s other copyright applications for the alleged dance, it appears that the only
 16 movements at issue occur 12 seconds into the video. For the convenience of the
 17 Court, Epic Games has excerpted the relevant portion of the deposit copy into a
 18 standalone video attached hereto as **Exhibit G**.

19 13. Attached hereto as **Exhibit H** is a true and correct copy of the E-File
 20 Correspondence with the Copyright Office regarding “The Dance by Alfonso Ribeiro
 21 - Variation B” (1-7226013290). As the correspondence shows, in a letter dated
 22 January 22, 2019, the Copyright Office refused registration for Variation B and stated
 23 that the “simple routine [] is not registrable as a choreographic work.”

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 25 **PLAINTIFF’S COPYRIGHT APPLICATION — VARIATION C**

26 14. As part of his copyright application for “The Dance by Alfonso Ribeiro -
 27 Variation C” (1-72260133364), Plaintiff submitted to the Copyright Office a

1 copyright application form. A true and correct copy of Plaintiff's copyright
 2 application form for "The Dance by Alfonso Ribeiro - Variation C" (1-72260133364)
 3 is attached hereto as **Exhibit I**.

4 15. In connection with his copyright application for "The Dance by Alfonso
 5 Ribeiro - Variation C" (1-72260133364), Plaintiff also submitted to the Copyright
 6 Office as his deposit copy a video of himself during the American Century Celebrity
 7 Golf Tournament. A true and correct copy of the deposit copy is attached hereto as
 8 **Exhibit J**.

9 16. Attached hereto as **Exhibit K** is a true and correct copy of the E-File
 10 Correspondence with the Copyright Office regarding "The Dance by Alfonso Ribeiro
 11 - Variation C" (1-72260133364). As the correspondence shows, in a letter dated
 12 January 22, 2019, the Copyright Office refused registration for Variation C and stated
 13 that the "single dance step is not registrable as a choreographic work."
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15 **FRESH PRINCE TV SHOW**

16 17. Plaintiff alleges that he created a dance in 1991 and "performed it on *The*
 17 *Fresh Prince of Bel-Air* during the episode *Will's Christmas Show*." Compl. ¶ 40.
 18 That episode is Episode 13 from Season 2. Attached hereto as **Exhibit L** is Disc 3
 19 from the *Complete Second Season of The Fresh Prince of Bel-Air*, which includes
 20 Episode 13. At the end of the episode at 23:04, a copyright notice appears. A
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screenshot of the copyright notice is shown below:



EPIC GAMES' FORTNITE VIDEO GAME

18. Plaintiff alleged that the "Fresh" emote that appears in Epic Games' *Fortnite* video game infringes on his rights. The *Fortnite* video game is a free-to-play, third-person view battle royale game in which up to 100 players fight to eliminate other players in a shrinking game arena. The game features an extensive world in which players explore, build, and destroy, and also battle against each other via player-to-player combat. A true and correct copy of Epic Games' *Fortnite* video game is attached hereto as **Exhibit M**.

19. Attached hereto as **Exhibit N** is a video clip of the Fresh emote excerpted from *Fortnite*.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 22, 2019

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Attorney for Defendant Epic Games, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have electronically filed the foregoing **DECLARATION OF DALE M. CENDALI, ESQ. IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS, SPECIAL MOTION TO STRIKE (ANTI-SLAPP), AND REQUEST FOR JUDICIAL NOTICE** and Exhibits A through N attached thereto with the Clerk of the Court using the CM/ ECF system, which will automatically send a notice of electronic filing to all persons registered for ECF.

/s/ Dale M. Cendali

Dale M. Cendali